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[COURT OF CRIMINAL APPEAL]

McELWAINE, C.J., TERRELL, AG. C.J. (F.M.S.) & MILLS, J.

December 12, 1938

KOH AH PENG (F) & ANOTHER v. REX

[SINGAPORE CRIMINAL APPEAL No. 28 of 1938]

Women and Girls Protection Ordinance, s. 6, sub-s. 1 and 3—Living on the earnings of prostitution—Definition of prostitute—Distinction between a prostitute and a kept mistress.

A woman who is habitually kept by one man though not married to him and who is chaste in her relations with all other men is not a prostitute if she cohabits with her keeper to the exclusion of all others.

CRIMINAL APPEAL.

Braga for appellants.

Howe, Crown Counsel, for Crown.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

The judgment of the Court of Criminal Appeal (McElwaine, C.J., Terrell, Ag. C.J. (F.M.S.) & Mills, J.) was delivered by **McELWAINE, C.J.**—

The first appellant was convicted of three offences of living wholly or in part on the earnings of the prostitution of three girls whom I shall call A. B. and C.

The second appellant was charged with similar offences in respect of the same three girls. He was acquitted in the cases relating to girls A. and B. but was convicted in the case of girl C.

The jury was asked by the trial judge to find special verdicts on the point as to whether each of these girls had intercourse with one man only or with several men.

The jury found that A. and B. between the dates mentioned in the charge had intercourse with several men but that C. had had intercourse with one man only—a man named Ong Hui Chui.

Section 6 (1) of the Women and Girls Protection Ordinance (Cap.33) as amended in 1937 reads as follows:—

> 'Every person who knowingly lives wholly or in part on the earnings of prostitution of another person shall be liable to imprisonment of either description for any term not exceeding two years."

Subsection (3) of the same section, so far as material to this case, reads:—

> "Where a male person is proved.....to be habitually in the company of a prostitute, or where any person is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to shew that he is aiding, abetting or compelling her prostitution with any other person or generally, he shall, in the absence of proof to the contrary, be deemed to be knowingly living on the earnings of prostitution."

Mr. Braga argued at the trial that C was not a prostitute but only a kept mistress and that therefore an offence in respect of her was not committed under section 6(1) and that the presumption under section 6(3) could not arise.

The point was argued before verdict in the absence of the jury. The judge, after giving his reasons, decided "I hold that prostitution is committed—or takes place—when a girl sells the use of her body to a man, even though it be to the one man only."

The learned Judge summed up to the Jury in this sense and having as I have stated, taken a special verdict as to whether the girls were promiscuous in their intercourse with men, reserved this point under section 319 of the Criminal Procedure Code and a Judge of the Court of Criminal Appeal gave leave to appeal against conviction generally.

The word "Prostitute" is not defined in the Women and Girls Protection Ordinance. Webster's Dictionary thus defines "prostitute" "a woman given to indiscriminate lewdness, a woman who offers herself indiscriminately to sexual intercourse for hire, a strumpet, a harlot".

The Concise Oxford Dictionary—"woman who offers her body to indiscriminate sexual intercourse especially for hire," and it derives "prostitution" from the Latin for "set up, or offer, for sale" which negatives the idea of a private arrangement.

A mistress is not included in either of the above definitions.

"Mistress" according to Webster is "a woman with whom a man habitually cohabits unlawfully as his paramour" while the Oxford Dictionary defines her as a "woman illicitly occupying place of wife".

In our opinions a woman who is kept habitually by one man and who is chaste in her relations with all other men is not a prostitute, if she cohabits with her keeper to the exclusion of all others.

The distinction is touched upon by Darling J. in *Upfill* v. *Wright* (1911) 1 K.B. at p.510 where he says:—

> "I do not think that it makes any difference whether the defendant is a common prostitute or whether she is merely the mistress of one man".

That was an action for rent. The defendant swore she was a prostitute and that the landlord's agent knew she was renting the flat for the purpose of receiving men there. The plaintiff's agent admitted that he knew she was the mistress of a certain man, that he knew that the man constantly came to the flat, and he supposed that the man was finding the money for the rent. He stated he did not know the woman was a prostitute.

In *Rex* v. *De Munck* (1918) 1 K.B. 635 Darling J. delivering the judgment of the Court of Criminal Appeal said:—

> "We are of opinion that prostitution is proved if it be shewn that a woman offers her body commonly for lewdness for payment in return".

There was evidence of promiscuity. The point taken by the appellant was that the girl was a virgin and had not ordinary natural sexual intercourse with the men whom she accosted.

A more difficult question is does the word "prostitution" in section 6(1) imply that the woman is a prostitute?

In *Rex* v. *De Munck* (*supra*) the Court said:—

> "The learned Commissioner at the Central Criminal Court laid down the law practically as we are now going to lay it down, and we therefore uphold his decision".

I thing this refers to the first part of the learned Commissioner's direction set out in the report in which he is stated to have directed the Jury that the term "prostitute" was not necessarily confined to a woman who for gain offered her body for natural sexual intercourse, and that if the Jury came to the conclusion that the appellant procured her daughter to offer her body for gain for the gratifiction of the sexual passions of any man by any unnatural and abnormal act of indecency, they would be justified in finding her guilty.

The point was the method of gratifying the passions, not whether that method was used with one man only for the evidence indicated several men, and there is nothing in the judgment of the Court of Criminal Appeal to indicate that they approved of "any man" in the sense of "one man only". The indefinite "any" indicates indiscrimination.

But the Ordinance itself draws a distinction between prostitution and other acts of sexual immorality. Thus Clauses (b) and (e) of section 4(1) both speak of "carnal connection except by way of marriage or for the purpose of prostitution", indicating that prostitution and illicit carnal knowledge are not synonymous.

A person who receives money from a man for boarding and lodging his mistress knowing her to be such may be reprehensible but such person does not commit an offence under section 6(1).

As C. was found by the Jury to have had intercourse with one man only she was not found to be a prostitute.

The conviction of the second appellant depended upon the presumption in section 6(3) and as C. was not a prostitute the presumption does not arise.

The conviction of the second appellant is quashed. The conviction of the first appellant on the third charge is likewise quashed on the ground that the money she received for keeping this girl C. was not earnings of prostitution.

The first appellant might have been charged in respect of C. under section 4(1) (b) but she was not and we do not think it a case for applying section 177 of the Criminal Procedure Code.

It must not be presumed that any kind of statement or evidence will suffice to prove that a woman who has intercourse with a man otherwise than by way of marriage is a kept mistress of that man and not a prostitute.

In deciding that issue, many factors must be borne in mind, such as the evidence proving exclusive use of the woman, the duration of the alliance, the age and antecedents of the woman, the place of abode of the woman and her mode of life. Carnal association with more than one woman at more or less the same time will weaken any evidence that one of them is a mistress rather than a prostitute.

There was evidence to support the conviction on the first and second charges and the convictions and sentences on these two charges are confirmed.

Appeal allowed.

[COMMISSIONER FOR WORKMEN'S COMPENSATION]

E. N. TAYLOR, Esq.

November 2, 1938

SAMMIYAH v. SAKANO & CO.

[SINGAPORE WORKMEN'S COMPENSATION CLAIM No. 111 of 1938]

Workmen's Compensation Ordinance (Cap. 70) Schedule II (h)—operation of loading a ship —Section 15—work undertaken by the principal —F. O. B. contract.

Loading goods into a tongkang to be towed out to a ship in the roads is part of the operation of loading the ship, within the meaning of Clause (h) of the Second Schedule to the Workmen's Compensation Ordinance (Cap. 70).

A workman was engaged by a Serang employed by the respondents.

Held, on the facts, that the Serang was not a contractor with the respondents and *held* further that if he was a contractor the respondents were liable as principals because in all the circumstances physical shipment was within the scope of their business and they had "undertaken" to ship the goods.

Hockley v. *West London Timber and Joinery Co., Ltd.* (VII B.W.C.C. 652) distinguished.

J. T. N. Handy (Extra Assistant Controller of Labour) for the applicant.

Taylour for the respondents.

The facts sufficiently appear from the Judgment.

E. N. TAYLOR, COMMISSIONER FOR WORKMEN'S COMPENSATION, SINGAPORE —The applicant was admittedly injured by a drum which fell while he was in the act of pushing it from the wharf to the respondent's lighter. The accident clearly arose out of and in the